

REMARKS

Claim 40 is amended, claims 1-30 are canceled, and claims 45-56 are added; as a result, claims 31-56 are now pending in this application.

Claims 1-30 are canceled without prejudice or disclaimer. Applicant expressly reserves the right to file these claims in a divisional application.

The Office Action points out the fact that claim 40 recites cup crush in units of "g per cm", while claim 43 recites cup crush in units of "g-cm". Applicant thanks the examiner for pointing out the typographical error in claim 40. Claim 40 is amended above to correct this minor error. This amendment is clerical in nature and does not effect the scope of claim 40.

§112 Rejection of the Claims

Claims 40 and 43 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully traverses. Claims 40 and 43 as originally filed are believed to meet the statutory requirements of 35 USC § 112, second paragraph. Withdrawal of this rejection is requested.

§102 Rejection of the Claims

Claims 31-41, 43, and 44 were rejected under 35 USC § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. 103(a) as obvious over Jackson et al. (U.S.4,741,944). Applicant respectfully traverses.

The Office Action admits that Jackson does not explicitly teach the limitations that the thickness after stretching would be greater than the thickness before stretching. The Office Action continues it is reasonable to presume that said limitations are inherent to the invention. The examiner supports the inherency assertion by stating that Jackson has similar materials and similar production steps for producing the wet-wipe.

“Anticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, arranged as in the claim.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)). The Office Action admits that Jackson does not explicitly teach the features of the thickness after stretching would be greater than the thickness before stretching. Thus, a *prima facie* case of anticipation has not been made. Reconsideration and withdrawal of the anticipation rejection are requested.

The Office Action admits that Jackson does not teach all of the features of independent claims 31 and 36. But, the Office Action maintains that the increases thickness after stretching as recited in claims 31 and 36 is inherent in Jackson because Jackson uses similar materials and similar production steps used to produce a wet-wipe. Applicant respectfully disagrees because the Office Action has not established a *prima facie* case of inherency because, as recited in MPEP § 2112, “In relying upon the theory of inherency, the examiner must provide basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art,” citing *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Applicant submits that the thickness features recited in independent claims 31 and 36 are not necessarily inherent in Jackson. For example, Jackson may use meltblown fibers and spunbond fibers of sufficient thickness such that they do not collapse and require an increase in thickness after stretching. Accordingly, the increase in thickness after stretching does not necessarily flow from the teachings of Jackson. As a result, a *prima facie* case of obviousness has not been made. Reconsideration and withdrawal of the obviousness rejection is requested.

Applicant further submits that Jackson teaches away from the present invention as defined by the pending claims. Specifically, Jackson teaches that the gathers of adjacent interleaved wipes are in general facing parallel alignment to each other so that the gathers of a leading wipe are adapted to temporarily engage the gathers of an immediately following wipe upon removal of the leading wipe. Col. 6, lines 3-16. If the gathers of Jackson were compressed to a reduced height, then the gathers would not necessarily engage the gathers of a following wipe during removal. Thus, Jackson’s gathers must maintain a minimum height and not be

compressed and decompressed when dispensed. This teaches away from the presently claimed invention as recited in claims 31-41, 43, and 44.

§103 Rejection of the Claims

Claim 42 was rejected under 35 USC § 103(a) as being unpatentable over Jackson et al. in view of Wright (U.S. 5,385,775). Applicant traverses. Claim 42 depends from claim 36 and is believed to be allowable therewith.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612-349-9587) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

DAVID J. BAER ET AL.


By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
612-349-9587

Date

9 April 2003

By


Timothy B. Clise
Reg. No. 40,957

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, Washington, D.C. 20231, on this 9th day of April 2003

Patricia A. Holtzman

Name



Signature